



January 16, 2007

Appeals Court affirms nine-year federal prison sentence for interstate domestic violence

A federal appeals court has affirmed a nine-year prison sentence imposed on **Joseph Nicolella**, of Warwick, for interstate domestic violence. In December 2004, Nicolella forcibly drove his estranged wife from Chepachet to Killingly, Connecticut, where he assaulted her.

United States Attorney Robert Clark Corrente announced the decision, which the U.S. Court of Appeals for the First Circuit rendered on January 12. The Court held that the sentencing judge appropriately incorporated kidnapping conduct into the sentencing calculation, and rejected Nicolella's argument that the resulting sentence was too severe.

In May 2005, Nicolella pled guilty to four interstate domestic violence charges, all related to his forcibly taking the victim to Connecticut and assaulting her there. Assistant U.S. Attorney Gerard B. Sullivan said that the government could prove that Nicolella met his estranged wife in Chepachet on December 5, 2004, convinced her to take him for a ride in her car, and assaulted her while they were parked in a wooded area. When she tried to escape, he took over driving and told her, "We're going to Connecticut because cops don't know me there."

Nicolella drove to Killingly, where he continued to assault his wife. She escaped and flagged down a passing truck driver, who called 911. Glocester Police and Rhode Island State Police arrested Nicolella in Lincoln on December 10.

As a condition of Nicolella's plea agreement, the government agreed to have an accompanying kidnapping charged dismissed. Nonetheless, when calculating an appropriate sentence under federal guidelines, Chief U.S. District Court Judge Ernest C. Torres incorporated the kidnapping conduct. Nicolella argued that Judge Torres incorrectly applied the kidnapping guideline, but the Appeals Court rebuffed that argument: "...the absence of aggravating factors, such as a ransom demand, sexual assault, or use of a dangerous weapon, does not mean that the conduct did not constitute a kidnapping..."

Nicolella also argued that the resulting 108-month sentence was unreasonably high in light of a prior First Circuit decision. Rejecting that argument, the Court wrote, "The District court's characterization of the crime as 'very, very serious' is amply supported by the record – including gruesome photographs and graphic grand-jury testimony of the victim – indicating that Nicolella repeatedly struck her in the face and threatened to kill her if she attempted to escape."

In October 2004, Nicolella's wife had obtained a Judgment of Protection in Rhode Island Family Court, protecting her from Nicolella. Nicolella was convicted of state domestic assault offenses in 2003 and 2004.

The **Federal Bureau of Investigation, Rhode Island State Police, Glocester Police,** and the **Connecticut State Police** investigated the case. Assistant U.S. Attorney Gerard B. Sullivan prosecuted it. Assistant U.S. Attorney Donald C. Lockhart, the District Appellate Chief, argued the appeal for the government.

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